

First with respect to the rejection 6, that claim has been cancelled. Reconsideration and withdrawal of the §112 rejection is therefore respectfully requested.

With respect to the prior art rejection, the cited references do not disclose or suggest the inventive combination as defined in claim 1. The '573 reference teaches the specific combination of *Arnica Montana*, *Rhus toxicodendron*, *Aesculus hippocastanum* and belladonna. It is stated on column 2, lines 64 to column 3, lines 2 that the taught combination of the '573 reference promotes circulation to restore blood flow to inflamed areas, thereby assisting in pain relief. Accordingly, it is respectfully submitted that one skilled in the art, when reading the '573 reference would not be directed to the inventive combination defined by claim 1. The person skilled in the art would instead be directed to a different combination of components to assist in pain reduction and would therefore be taught away from the present invention.

The '924 reference teaches the use of emu oil in topical compositions and more particularly, a method of extracting a purified yellow form of emu oil according to a particular chemical process. It is purported in '924 that the extracted yellow emu oil can be used as an active ingredient in pharmaceutical preparations. No extraction steps of emu oil are taught or indeed, are necessary in the present invention. Hence, when reading the '924 reference, one skilled in the art is taught away from the invention as defined in claim 1.

The '238 reference teaches the combination of aloe vera, eucalyptus oil, lemon oil orange oil, peppermint oil and rosemary oil for pain relief. Rosemary oil is taught as only one essential constituent of a total of six essential constituents in the '238 reference. The '238 reference does not suggest any other combination. Because no other combination of constituents are taught or suggested in the '238 reference, one skilled in the art would not be directed by the '238 reference to the combination as defined in claim 1.

There is no suggestion in any of the cited documents to combine the ingredients arnica, rosemary oil and emu oil in a therapeutic composition. Accordingly, one skilled in the art would not have been motivated from reading the '924, '573 or the '238 references, either alone or in combination, to combine the particular constituent selection that is defined in claim 1. Hence, one skilled in the art, from reading the cited art, would not arrive at a therapeutic composition that achieves greater inflammation reduction by combining arnica, rosemary oil and emu oil. The prior art merely teaches the use of arnica, rosemary oil or emu oil in isolation. There is no teaching of the combination defined by claim 1.

Furthermore, one skilled in the art would have had to select these three ingredients from the lists of ingredients disclosed in the cited art to arrive at the invention claimed in claim 1. It is respectfully submitted that it is improper to use the specification and/or claims of the captioned application as a guide in hindsight reconstruction of the invention defined by claim 1 from unrelated elements disclosed in the cited art.

Accordingly, Applicant respectfully submits that a *prima facie* case of the obviousness of the differences between claim 1 and the cited art has not been established in the Action because the Action does not identify a teaching in the '924, '573, '238 references, or the Skin Care Dictionary that these differences should be combined. Not only is there no suggestion in the art that these ingredients should be combined, but the Action does not even attempt to establish that there is an expectation that the cited references can be successfully combined into the combination asserted in the Action. To make out a *prima facie* showing of obviousness, the Action must (a) identify the differences and determine whether they are shown in the prior art, (b) find a teaching in the art that the references should be combined, and (c) find some expectation that the references can be successfully combined. MPEP §2142. The Official Action of December 11, 2002 does not identify the prior art teaching of the differences, does not identify a teaching that the differences should be combined, and does not even attempt to establish the required expectation that they can be successfully combined. It is therefore respectfully submitted that the Action does not establish a *prima facie* showing of the obviousness of the claimed invention, and it is therefore requested that this §103 rejection be reconsidered and withdrawn.

Claim 26 is of similar in scope to claim 1. Claims 2-5, 7-25, 27-39 and 41-42 are dependent on the independent claims and hence the above remarks are also relevant to these claims. Reconsideration and withdrawal of the §103 rejection of all these claims is therefore requested in light of the lack of a proper *prima facie* showing of the obviousness of the differences between the combination asserted in the Action and claims 1-5, 7-39, and 41-42.

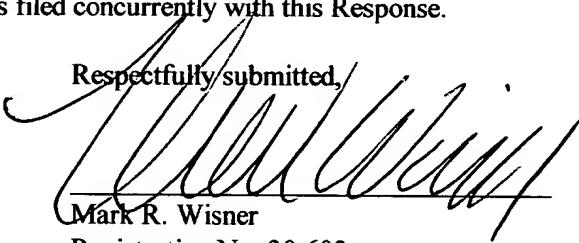
In concluding, there are two "housekeeping" matters that need attention in connection with the present application. First, as filed, the application inadvertently misspelled the inventor's name. Enclosed herewith is a fresh Declaration and Power of Attorney that has been executed by the inventor on which his name is spelled correctly (with two "L's"). Entry of this Declaration and correction of the records of the Office is respectfully requested.

The second housekeeping matter is that Applicant notes that, although a timely request for refund was filed in the captioned application in September of 2000, Applicant has not received the

\$621 refund to which he is entitled. It is therefore respectfully requested that the Office act on that request for refund by crediting that overpayment to the Deposit Account of the below-signed attorney for Applicant.

Entry of the amendments set out above, reconsideration and withdrawal of the rejections, allowance of the claims, and passage of the application to issuance are all respectfully requested. Attention is also directed to the new address of Applicant's Attorney as set out in the Notice of Change of Correspondence Address filed concurrently with this Response.

Respectfully submitted,



Mark R. Wisner

Registration No. 30,603  
Wisner & Associates  
1177 West Loop South, Suite 400  
Houston, TX 77027  
Telephone: (713) 785-0555  
Facsimile: (713) 785-0561

ATTORNEY FOR APPLICANT

Date: April 11, 2003